

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 1:05CR4
(JUDGE KEELEY)

DANIEL WILSON TESTERMAN,

Defendant.

**ORDER DENYING LETTER TO RECONSIDER
CONSTRUED AS A MOTION TO RECONSIDER**

Pending before the Court is Defendant's Letter to Reconsider the Court's Report and Recommendation entered February 25, 2010¹ which the Court construes as a Motion to Reconsider.

The standards for a Motion to Reconsider were well stated in Bikim v. Mukasey, 2008 WL 434 3235 (4th Cir. 2008).

We review the Board's decision to deny a motion to reconsider for abuse of discretion. INS v. Doherty, 502 U.S. 314, 323-24, 112 S.Ct. 719, 116 L.Ed.2d 823 (1992); see 8 C.F.R. & 1003.2(a) (2008). A motion for reconsideration asserts that the Board made an error in its earlier decision, Turri v. INS, 997 F.2d 1306, 1311 n. 4 (10th Cir. 1993), and requires the movant to specify the error of fact or law in the prior Board decision, 8 C.F.R. & 1003.2(b)(1) (2008); Matter of Cerna, 20 I. & N. Dec. 399, 402 (B.I.A. 1991) (noting that a motion to reconsider questions a decision for alleged errors in appraising the facts and the law). The burden is on the movant to establish that reconsideration is warranted. INS v. Abudu, 485 U.S. 94, 100, 108 S.Ct. 904, 99 L.Ed.2d 90 (1988). "To be within a mile of being granted, a motion for reconsideration has to give the tribunal to which it is addressed a reason for changing its mind." Ahmed v. Ashcroft, 388 F.3d 247, 249 (7th Cir. 2004). Motions that simply repeat contentions that have already been rejected are insufficient to convince the Board to reconsider a previous decision. Id.

¹ Doc. No. 126.

There is no basis for this Motion to Reconsider. Motion **DENIED**.

Any party who appears pro se and any counsel of record, as applicable, may, within fourteen (14) days from the date of this Order, file with the Clerk of the Court the written objections identifying the portions of the Order to which objection is made, and the basis for such objection. Failure to timely file objections to the Order set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Order.

The Clerk of the Court is directed to provide a copy of this Order to parties who appear pro se and all counsel of record, as applicable, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

DATED: March 5, 2010

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE